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COVER NOTE

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

ON THE IMPLEMENTATION OF REGULATION (EU) 182/2011

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1. Introduction

The Lisbon Treaty substantially modified the framework for the conferral of powers upon the Commission by introducing a distinction between delegated and implementing powers. Article 291 (3) TFEU foresees that, unlike for delegated acts under Article 290 TFEU, the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of power be laid down in advance in regulations adopted by ordinary legislative procedure. This has led to the adoption of Regulation (EU) 182/2011¹.

Article 15 of Regulation (EU) 182/2011 requires the Commission to report to the European Parliament and the Council on the implementation of the Regulation five years after its entry into force. This report complies with this requirement. In doing so, it concentrates on the elements newly introduced by Regulation (EU) 182/2011 compared to the Council Decision 1999/468/EC, as amended by Council Decision 2006/512/EC, which provided the applicable framework before Regulation (EU) 182/2011.

2. Overall context and functioning of Regulation (EU) 182/2011

Regulation (EU) 182/2011 entered into force on 1 March 2011. It did not require any measures to be taken by the Member States. On the Commission side, the standard rules of procedure for committees referred to in Article 9 of Regulation (EU) 182/2011 were adopted on 8 July 2011 and published in the Official Journal on 12 July 2011². The rules of procedure of the individual, existing committees were over time adapted to the new standard rules of procedure. The register foreseen in Article 10 of the Regulation already existed since 2002, was thoroughly revamped in 2008 and in 2011 and is being continuously improved.

The transitional provisions in Article 13, which provided for an automatic application of the new procedures to existing legislation, and in Article 14, which addressed pending procedures, allowed for an immediate application of Regulation (EU) 182/2011 as from 1 March 2011 and hence a smooth transition.

The Commission reports to the European Parliament and the Council in its annual reports on the working of the committees³. The table below gives an overall summary of data on the working of the committees since the entry into force of Regulation (EU) 182/2011 and the two preceding years. The annual reports also cover data on the regulatory procedure with

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13–18

² OJ C 206, 12.7.2011, p.11

³ Annual reports on the functioning of the committees, available on <http://ec.europa.eu/transparency/regcomitology/index.cfm?do=Report.Report>

scrutiny (RPS), a procedure foreseen under Decision 1999/468/EC, which still applies where foreseen in the basic act⁴.

	Committees	Opinions	Measures adopted	Positive opinions	No opinions	Negative opinions
2009	266	2 091	1 808 (131 RPS)	2 003	78	10
2010	259	1 904	1 812 (164 RPS)	1 783	121	0
2011*	268	1 868	1 788 (163 RPS)	1 789	75	4
2012	270	1 923	1 824 (167 RPS)	1 845	78	0
2013	302	1 916	1 887 (171 RPS)	1 845	50	0
2014	287	1 889	1 728 (165 RPS)	1 838	51	0

Table 1, data from the annual reports on the functioning of the committees, the total number of positive opinions delivered by committees may differ from the number of acts adopted by the Commission if opinions are delivered one year but the acts are not adopted until the following year. * Figures relate to the entire year 2011

Overall the figures indicate that the Regulation has allowed a seamless continuation of the system. When comparing the figures since 2011 to the years before the application of Regulation (EU) 182/2011, both the number of committees and their activity has remained stable. The number of committees was at 266 in 2009 and at 287 in 2014. Similarly the number of measures adopted was at 1808 in 2009 and at 1728 in 2014.

Building on experience, the Regulation introduced in its Article 3 a number of provisions linked to the working of the committees that reflected common practice, but were not spelled out in the legislation before. This includes provisions on the use of the written procedure, an explicit requirement for the chair to find solutions that command the widest possible support within the committee and the possibility to amend the draft acts prior to the vote to take account of the discussions of the committee. These common provisions continued to be effective and useful in ensuring a proper functioning of the committees. The written procedure is widely used - in 2014 there were 773 committee meetings and 893 written procedures and figures are similar in the years before - and it is an efficient tool. The work of the committees remains consensual: the overwhelming percentage of opinions (well over 90%) are positive opinions, the majority of these adopted by unanimous vote or by consensus of the committee members, and there are hardly any negative and relatively few no opinions.

Regulation (EU) 182/2011 provides a comprehensive and exhaustive legal framework for the Commission's exercise of implementing powers. The outcome of the negotiations on the Interinstitutional Agreement on Better Law-Making⁵ foresees a commitment by the institutions to refrain from adding, in Union legislation, procedural requirements which would alter the mechanisms for control established by Regulation (EU) 182/2011⁶.

⁴ See Article 12 of Regulation(EU) 182/2011

⁵ Based on COM(2015) 216 final

⁶ The signature of the Interinstitutional Agreement by the three institutions is expected to follow the formal approval by the European Parliament in the coming weeks

In the framework of the Communication on Better Regulation⁷ the Commission committed to several measures intended to improve the mechanisms to listen more closely to citizens and stakeholders, and be open to their feedback, at every stage of the policy making process. In relation to implementing acts the Commission committed that important implementing acts which are subject to committee opinion will be made public for four weeks, allowing stakeholders to submit comments before any vote by Member States in the relevant committee. This will significantly increase the transparency for implementing acts in the phase before the committee vote.

3. Main changes

3.1 The reduction of the number of committee procedures

One of the objectives of Regulation (EU) 182/2011 was to simplify the system by reducing the number of committee procedures. The old regulatory and management procedures were replaced by the examination procedure, while the advisory procedure was maintained. The reduction of the number of procedures has not raised particular issues.

3.2 The creation of the appeal committee

The appeal committee was a novelty introduced by Regulation (EU) 182/2011. It was introduced to create a second layer to address issues on which the committee could not find agreement. Referral to the appeal committee is a rather exceptional step in the procedure. It is a possibility to move ahead in case of a negative opinion or a no opinion with a blocking effect⁸ if the implementing act is deemed necessary.

The appeal committee adopted its rules of procedure on 29 March 2011. The Commission already made in accordance with Article 14 of the rules of procedure (the review clause) a first evaluation how these rules of procedure operate in practice. The outcome of this review was included in the 2013 Annual Report on the working of the committees⁹.

	Overall number of Appeal Committees referrals	DGs/policy areas concerned	Appeal committee positive	Appeal committee negative	Appeal committee no opinion	Measures adopted in case of no opinion
2011	8	Plant protection products, medicinal products	2	1	5	5
2012	6	Genetically modified food and feed	0	0	6	6

⁷ COM(2015) 215 of 19.05.2015

⁸ A no opinion has a blocking effect in the cases listed in Article 5(4) of Regulation (EU) 182/2011, i.e. in the areas of taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures, the basic act provides that the draft implementing act may not be adopted where no opinion is delivered; or a simple majority of the component members of the committee opposes it.

⁹ COM(2014) 572 final

2013	9	Genetically modified food and feed, plant protection products, biocidal products, community customs code	0	0	9	8
2014	13	Genetically modified food and feed, rules and standards on ship inspections	2	0	11	11
Total	36		4	1	31	30

Table 2, data from the Comitology Register and the annual reports

So far the appeal committee has mainly been convened in relation to one policy area, namely health and consumer protection, and more specifically in relation to genetically modified food and feed and plant protection products. In these cases the appeal committee has so far confirmed the no opinion outcome of the committee. The Commission Communication 'Reviewing the decision-making process on genetically modified organisms (GMOs)¹⁰' provides a detailed analysis of the decision-making process in the area of genetically modified food and feed.

Overall the referral to the appeal committee has taken place with a comparable frequency to the earlier referrals to the Council, which are no longer permitted under the new institutional framework. Those referrals occurred in similar policy areas and with similar outcomes. On the practical side, experience shows that Member States were so far in nearly all cases represented by members of the Permanent Representation.

3.3 The flexibility for the Commission to adopt in case of a no opinion (examination procedure)

Regulation (EU) 182/2011 introduced more flexibility for the Commission in case there is no qualified majority in favour or against the draft (referred to as a no opinion) in the committee in the examination procedure. Previously, both the management and the regulatory procedure foresaw that in case of a no opinion in the committee, respectively if the Council did not act, the Commission '*shall*' adopt the measure. Regulation (EU) 182/2011 provides that the Commission '*may*' adopt, either in case of a no opinion in the committee, or in the appeal committee. Increased flexibility was introduced to enable the Commission to reconsider draft measures and to be in a position to decide whether or not to adopt the draft measures or to present an amended draft to the committee, taking account inter alia of positions expressed within the committee.

¹⁰ COM(2015) 176 final

This increased flexibility is subject to a number of exceptions listed in Article 5(4) of Regulation (EU) 182/2011, i.e. in certain policy areas (taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures), if the basic act provides that the draft implementing act may not be adopted where no opinion is delivered (no opinion clause) or if a simple majority of the component members of the committee opposes it. In these cases the Commission is prevented from adopting the draft. If the act is nevertheless deemed necessary the chair can submit an amended version of the implementing act to the committee or refer it to the appeal committee. The inclusion of a no opinion clause in the basic act must respond to a specific need and must be justified by the legislator. Since the entry into force of Regulation (EU) 182/2011 the Commission has made statements in that sense in about 30 cases in response to the legislator which had introduced such clauses in basic legal acts without providing justifications for doing so. The majority of actual no opinion votes have so far, however, taken place in areas that are either already covered by the specific policy areas listed in Article 5(4), and where the Commission cannot adopt without going to the appeal committee, or in areas (notably customs, agriculture, development cooperation and trade) in which none of the three exceptions apply and the Commission could adopt the act anyhow without having to seize the appeal committee.

	No opinions in examination procedure	Commission adopted measure	Commission did not adopt measure
2011	67	63	4
2012	73	70	3
2013	49	47	2
2014	45	42	3
Total	234	222	12

Table 3, data extracted from the Comitology Register (excluding the appeal committee), data may differ from that in the annual report

The data above shows that the Commission does not frequently use the possibility to not adopt the act in case of no opinion. In practice the Commission's flexibility is significantly reduced in cases relating to the authorisation of products or substances, such as in the area of genetically modified food and feed, as the Commission is required to adopt a decision (authorising or prohibiting the placing on the market) within a reasonable amount of time. It cannot abstain from taking a position. In these cases the Commission is also prevented from adopting the draft act in case of no opinion of the committee, to do so it must first refer the draft act to the appeal committee. This also partially explains why the appeal committee was so far mainly convened in this policy area. To address the particular situation in the field of genetically modified food and feed, and following the solution found for cultivation authorisations, the Commission adopted in April 2015 a proposal¹¹ to amend the legislative framework. While the authorisation process is maintained, the proposal foresees that Member

¹¹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory, COM/2015/0177 final of 22.04.2015

States may restrict or prohibit the use of genetically modified food or feed on their territory. The use of this possibility has to be based on grounds other than those related to risks to human and animal health and to the environment, which are addressed at EU level.

The newly granted flexibility for the Commission to decide whether to adopt a draft implementing act in the case of no opinion is useful. Even though used so far in few cases¹², it allowed the Commission to reassess the draft measure after the voting results and the discussion in the committee had shown that it did not enjoy the widest possible support within the committee.

3.4 The criteria for the choice between the procedures

Regulation (EU) 182/2011 sets out the criteria for the choice of procedures. Article 2(2) establishes a number of cases in which the examination procedure is generally assumed to apply. The advisory procedure applies in principle to all cases to which the examination procedure does not apply. The criteria for the choice of the examination procedure are similar to those provided for in the 1999 Comitology Decision. Overall, the choice of procedure appears to have been uncontroversial. One notable exception is the case of the conciliation committee discussing mainly about the choice of procedure (relating to Macro-financial assistance to Georgia¹³).

	Acts adopted under examination procedure	Acts adopted under the advisory procedure
2011	1 311	77
2012	1 591	121
2013	1 579	143
2014	1 437	122

Table 4, data extracted from the Comitology Register, data may differ from that in the annual report

The examination procedure is clearly the procedure applicable in the majority of cases, only about 10% of the opinions are adopted by advisory procedure. This reflects largely the split of management/regulatory versus advisory procedure under the previous regime.

3.5 The scrutiny right for the European Parliament and the Council in case of basic acts adopted under the ordinary legislative procedure

Both legislators must be properly and continuously informed of committee proceedings through the Comitology Register. The legislators have a right of scrutiny over draft implementing acts based on acts adopted under the ordinary legislative procedure. This means that at any stage of the procedure they can indicate to the Commission that the draft exceeds the implementing powers provided in the basic act. In such case the Commission has to review the draft and inform the European Parliament and the Council whether it intends to maintain, amend or withdraw it.

¹² One of them was the draft Commission Implementing Regulation amending Implementing Regulation (EU) No 29/2012 on marketing standards for olive oil, which the Commission decided not to adopt.

¹³ 2010/0390(COD)

The two main differences here in relation to the situation before are that there is no fixed scrutiny period any longer and that now the scrutiny right also applies to the Council. The abolition of the one month standstill period has brought efficiency gains and has not proved problematic, especially given the fact that in practice the average time between the vote in the committee and the adoption of the implementing act lies between 30 and 50 days (thus in any case longer than the previous one month period). The scrutiny right has not been used by Council and only in 4 cases by the European Parliament by the end of January 2016¹⁴. In one of these, the European Parliament adopted a resolution¹⁵ after the implementing act was adopted criticising the short timeline between the transmission to the committee and the adoption.

3.6 The specific procedural requirements for trade defence measures (anti-dumping and countervailing measures)

A novelty compared to the earlier system is that trade defense measures (anti-dumping and countervailing measures) are now also submitted to committee control, albeit with specific safeguards. First, in case of antidumping and countervailing measures in which the committee delivers no opinion and a simple majority opposes the draft implementing act the appeal committee must be seized. A consultation process of Member States and specific shorter timeframes are also foreseen. Second, at the stage of the appeal committee specific rules are in place blocking the Commission from the adoption of definitive multilateral safeguard measures in the absence of a positive opinion.

In practice, before these changes could take effect, the respective trade legislation had to be adapted to make decisions in this field subject to the procedures for the control of the Commission's implementing acts by Member States. This was not the case before, so the alignment provisions in Regulation (EU) 182/2011 could not yet apply. Regulation (EU) 182/2011 thus only started applying with the adoption of respective alignment legislation in January 2014¹⁶. The experiences with the specific provisions are therefore relatively limited until now and relate to the activities of one committee only, the Trade Defence Instruments Committee (C 44100).

	Opinions	Measures adopted*	Positive opinions	No opinions	Negative opinions	Appeal Committee
2014	35	30	25	10	0	0
2015	43	43	40	2	1	0

Table 5, data extracted from the Comitology Register and the annual report*. The total number of positive opinions delivered by committees may differ from the number of acts adopted by the Commission if opinions are delivered one year but the acts are not adopted until the following year.

In the cases of no opinions so far there has not been a simple majority against the draft implementing act and the appeal committee therefore has so far not been used.

¹⁴ P7_TA(2014)0096, P8_TA(2015)0409, P8_TA-PROV(2015)0456 and P8_TA-PROV(2015)0455

¹⁵ P7_TA(2014)0096

¹⁶ Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures, OJ L 18, 21.1.2014, p. 1–51

3.7 Specific procedures

Regulation (EU) 182/2011 foresees in Article 8 the possibility for the Commission to, on duly justified imperative grounds of urgency and if so provided in the basic act, adopt an implementing act without its prior submission to the committee. The committee's opinion is obtained afterwards and where the examination procedure applies the Commission must repeal the act in case of a negative opinion. Specific rules apply for provisional anti-dumping and countervailing measures. The Commission has only made use of this procedure in very few cases, mainly in the field of trade defence instruments under the advisory procedure.

Another provision, foreseeing for the possibility of adopting acts despite a negative or no opinion in order to avoid creating a significant disruption of the markets in the area of agriculture or a risk for the financial interest of the Union, is set out in Article 7. There has so far been no necessity to use this procedure.

3.8 The alignment of the existing *acquis* to the new procedures

Regulation (EU) 182/2011 provides in its Article 13 for the automatic alignment of all references to existing committee procedures to the new procedures with the exception of the regulatory procedure with scrutiny. This automatic alignment has ensured a smooth changeover to the new system. As regards legislative acts in force which currently contain references to the regulatory procedure with scrutiny, no automatic alignment was foreseen in Regulation (EU) 182/2011. The Commission made a commitment to review the provisions attached to this procedure, in order to adapt them in due course according to the criteria laid down in the Treaty on the Functioning of the European Union (a statement in this sense was published in the Official Journal together with the Comitology Regulation¹⁷). In line with this commitment the Commission made three horizontal alignment legislative proposals in 2013¹⁸. Due to the stagnation of the interinstitutional negotiations on these files, the Commission, as announced in its 2015 Work Programme¹⁹, withdrew them²⁰. In the Interinstitutional Agreement on Better Law-Making²¹ the Commission committed to submit by the end of 2016 a new proposal for the alignment of legislative acts which still contain references to the regulatory procedure with scrutiny. Pending this, a large number of measures are still adopted under the regulatory procedure with scrutiny (see table 1)²². In the interim, whenever the Commission makes a proposal for an amendment of the substantive provisions of an individual legislative act making reference to the regulatory procedure with scrutiny that proposal also contains an alignment of the provisions referring to the regulatory procedure with scrutiny to the new regime.

¹⁷ OJ L 55 of 28.2.2011, p. 19

¹⁸ COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final

¹⁹ COM(2014) 910 final

²⁰ (2015/C 80/08), OJ C 80 of 7.02.2015, p. 17

²¹ See footnote 6

²² The alignment of some 160 basic acts which had not been aligned to the regulatory procedure with scrutiny (mainly basic acts which were not under the co-decision procedure before the entry into force of the Lisbon Treaty) is being progressively carried out and has been achieved with few exceptions.

4. Conclusions

Regulation (EU) 182/2011 has allowed over the last five years the effective use of the Commission's implementing powers under the control of Member States. The existing framework allows for an efficient and constructive cooperation between the Commission and Member States. The Commission has not identified issues that would require or warrant a legislative proposal to amend Regulation (EU) 182/2011 at this point of time. The Commission invites the European Parliament and the Council to take note of this report.